

**REMARKS/ARGUMENTS**

Claims 1, 3, and 4-13 are pending in this application. Claims 1, 11, and 12 are independent. Claims 1, 8, 11, and 12 are amended. Claims 1, 3, and 4-10 are allowed. No new matter has been added.

The courtesies extended to Applicant's representative by Examiner Faulk during the interview held on April 15, 2009, are appreciated. The reasons presented at the interview as warranting favorable action are incorporated into the remarks below and constitute Applicant's record of the interview.

**CLAIM OBJECTION**

On page 2, the Office Action objects to claim 11. In particular, the Office Action alleges that the DSP [Fig. 2: 2] lacks the recited sensor. Applicant respectfully traverses this claim objection for the reasons listed below.

Independent claims 1 and 11 both recite, in part, the following subject matter: "a sensor that measures a background noise level" (emphasis added). This subject matter finds support in the specification, for example, in paragraph [0092]. This subject matter is also depicted in Figure 10. The recited sensor [Fig. 10: 130] may be a system for measuring background noise such as a separate microphone.

As discussed during the telephonic interview on April 15, 2009, Applicant hereby amends claim 11 to define the sensor separately from the digital audio

signal processor. Thus, claim 11 now recites, in part, the following subject matter: "an element having as an input a measured noise level from a sensor, the sensor measuring a background noise level." Therefore, Applicant respectfully requests withdrawal of the objection to claim 11.

#### **REJECTION UNDER 35 U.S.C. § 101**

On page 2, the Office Action rejects claim 12 under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. In particular, the Office Action alleges that the subject matter of claim 12 "can be manually implemented." Applicant respectfully traverses this rejection.

Regarding the *Bilski* standard, Applicant respectfully submits that claim 12 recites a particular apparatus, a digital audio signal processor. Applicant further submits that the claimed subject matter cannot be manually performed because the recited signal processing necessarily involves the use of the digital audio signal processor. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 12 under 35 U.S.C. § 101.

#### **REJECTIONS UNDER 35 U.S.C. § 103**

On pages 3-4, the Office Action rejects claim 12 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent Application No. 2003/0216879 to

Hashemian (hereinafter "Hashemian") in view of U.S. Patent No. 5,200,709 to Saito et al (hereinafter "Saito"), and further in view of JP 03-046897 to Agari (hereinafter "Agari"). On page 4, the Office Action rejects claim 13 under 35 U.S.C. § 103(a) as allegedly unpatentable over Hashemian in view of Saito, further in view of Agari, and still further in view of U.S. Patent No. 5,018,205 to Takagi et al. (hereinafter "Takagi"). Applicant respectfully traverses these rejections.

Claim 12 now recites, in part, the following subject matter "adapting a **HP cut-off frequency** to the **measured noise level**, wherein the HP cut-off frequency increases as the background noise level increases, and a LP cut-off frequency decreases as the HP cut-off frequency increases" (emphasis added). This subject matter finds support in, for example, paragraphs [0094] and [0100].

Applicant respectfully submits that the references of record fail to disclose, teach, or suggest this subject matter. On page 3, the Office Action correctly concedes that "Hashemian fails to teach . . . matching the high pass frequency and low pass frequency." The Office Action then attempts to remedy this admitted deficiency in Hashemian by applying the teachings of Saito, alleging that lines 35-39 of col. 7 in Saito disclose frequency matching.

However, Applicant respectfully submits that Saito's matching filter does not resemble the claimed subject matter. As depicted in Fig. 6 of Saito, the matching

filter [12] does not operate based upon a measured noise level. Thus, Saito could not adapt a **HP cut-off frequency** to the **measured noise level**.

On page 4, the Office Action alleges that Agari teaches a high pass filter whose cut-off frequency is determined based on a measured noise level. However, Applicant respectfully submits that Agari does not teach that “the HP cut-off frequency increases as the background noise level increases, and a LP cut-off frequency decreases as the HP cut-off frequency increases.” Moreover, on page 5 of the Office Action, the Examiner's statement of reasons for allowance recites, in part, that the prior art or combination thereof fails to disclose or make obvious that a low pass cut-off frequency decreases as the high pass cut-off frequency increases.

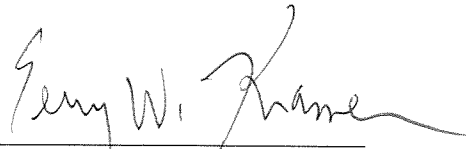
Claim 13 depends from independent claim 12. Thus, Applicant respectfully submits that claim 13 is allowable at least on the basis of its dependency upon an allowable independent claim. Moreover, Takagi fails to remedy the deficiencies of Hashemian in view of Saito and further in view of Agari.

Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 12 and 13 under 35 U.S.C. § 103(a).

**CONCLUSION**

In view of the remarks above, Applicant believes that each of the rejections/objections has been overcome and the application is in condition for allowance. In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our Deposit Account Number 50-0578 and please credit any excess fees to such Deposit Account. Should there be any remaining issues that could be readily addressed over the telephone; the Examiner is asked to contact the agent overseeing the application file, David Cordeiro, of NXP Corporation at (408) 474-9057.

Respectfully submitted,  
**KRAMER & AMADO, P.C.**



Terry W. Kramer  
Registration No.: 41,541

Date: April 23, 2009

Please direct all correspondence to:

Corporate Patent Counsel  
NXP Intellectual Property & Standards  
1109 McKay Drive; Mail Stop SJ41  
San Jose, CA 95131  
CUSTOMER NO.: 65913